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Attorney for Plaintiff
DONNA MATHEWS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DONNA MATHEWS,

Plaintiff,

vs.

PAN-AMERICAN LIFE INSURANCE
COMPANY,

Defendant.

No.: C 07-02757 SBA

**JOINT CASE MANAGEMENT
STATEMENT**

Date: September 19, 2007
Time: 4:00 p.m.
Place: Courtroom 3

Honorable Sandra B. Armstrong

Pursuant to Local Rule 16-9, the parties to the above-entitled action, plaintiff Donna Mathews (“plaintiff”) and defendant Pan-American Life Insurance Company (“Pan-American”) jointly submit this Case Management Statement and [Proposed] Order and request the Court to adopt it as its Case Management Order in this case as follows:

1 **1. Jurisdiction and Service**

2 Jurisdiction of this Court over the subject matter of this action is predicated on 28 U.S.C.
3 Section 1332 because the amount in controversy is in excess of \$75,000.00, exclusive of interests
4 and costs, and the parties are of diverse citizenship, as alleged in the Complaint.

5 No issues exist regarding personal jurisdiction or venue. All parties have been served in this
6 case.

7 **2. Facts**

8 **Defendant:** This case arises from plaintiff's claims for benefits under two disability income
9 policies and an income protection policy issued by Pan-American. Plaintiff submitted claims under
10 the policies to Pan-American in connection with a November 2005 incident in which plaintiff was
11 injured when she fell off a ladder. Plaintiff alleges that Pan-American unilaterally stopped paying
12 benefits to Plaintiff, and Pan-American improperly denied plaintiff's request for rehabilitation
13 benefits. Pan-American asserts that it has continued to pay disability benefits due under the three
14 policies, and acted within its discretion to deny plaintiff's request for rehabilitation benefits.

15 **Plaintiff:** This is an insurance bad faith case. Plaintiff purchased disability insurance
16 coverage from defendant, but when Plaintiff became disabled Defendant failed to provide the
17 benefits as provided in the policy, and generally neglected the obligations imposed upon it by
18 California law. Plaintiff contends that Defendant engaged in a general pattern and practice of
19 refusing to process and pay Plaintiff's benefits properly. The policy provided for a waiver of
20 premiums, but Defendant nonetheless continued to withdraw premiums from Plaintiff's bank
21 account. For months, Defendant paid only a portion of the monthly benefits required by the policy,
22 and benefits have never been entirely current. Without cause or notice to Plaintiff, Defendant
23 unilaterally ceased making any payments to Plaintiff for several months. When payments resumed,
24 Defendant did not make up the arrearage in benefits that it had created by unilaterally stopping
25 benefits. In addition, Defendants have engaged in tactics designed to confuse Plaintiff and to cover
26 up Defendants' inadequate payment of benefits and excessive withdrawal of premiums from
27 Plaintiff's bank account. These tactics include sending Plaintiff undated Explanations of Benefits,
28 sending premium notices at times when Defendants were obligated to waive premiums, sending

1 premium refund checks without explanation of what premiums were being refunded, sending benefit
2 payments in the wrong amount, and refusing to account for all premiums withdrawn from Plaintiff's
3 account. A central selling point of the policy was rehabilitation benefits. Plaintiff understood that, if
4 she was disabled from the duties of her principle occupation, this policy would provide her with
5 funds for retraining. The policy explicitly provided for rehabilitation benefits, but when Plaintiff
6 asked for the benefits, Defendant refused to provide them. Plaintiff contends that, in denying
7 rehabilitation benefits, Defendant has ignored the special and heightened duties imposed by
8 California law on insurance carriers and, instead, made its decision solely based on Defendant's own
9 financial interest.

10 **3. Legal Issues**

11 Plaintiff asserts causes of action for breach of contract, bad faith, fraud, negligent
12 misrepresentation, intentional infliction of emotional distress and unfair business practices. Pan-
13 American contends that it has not breached the policy contracts because it has continued to pay the
14 disability benefits due under the policies, and acted within its discretion in denying plaintiff's
15 request for rehabilitation benefits. For these reasons, Pan-American contends that it also is not liable
16 as to plaintiff's remaining claims.

17 **4. Motions**

18 There are no prior or pending motions in this case. Pan-American anticipates filing a Motion
19 for Summary Judgment.

20 **5. Amendment of Pleadings**

21 The parties do not anticipate adding or dismissing any parties, claims or defenses.

22 **6. Evidence Preservation**

23 The parties have collected and preserved all documents related to this action.

24 **7. Disclosures**

25 Pursuant to the Court's Scheduling Order, the parties will exchange their initial disclosures
26 on or before August 22, 2007.

27 **8. Discovery**

28 No discovery has been taken to date. Discovery is needed regarding the following subjects:

(1) the terms of the insurance contracts issued to plaintiff; (2) the nature and content of communications between plaintiff or her representatives and Pan-American; and (3) Pan-American's handling of plaintiff's claim for benefits under the policies.

The parties anticipate propounding written discovery to each other and taking principal party depositions. Pan-American also anticipates subpoenaing records and deposing plaintiff's treating physicians and healthcare providers. The parties anticipate that non-expert discovery should be completed by April 4, 2008, and expert discovery should be completed by July 30, 2008.

The parties do not propose any limitations or modifications of the discovery rules for purposes of this action.

9. Class Actions

Not applicable.

10. Related Cases

None.

11. Relief

Plaintiff is claiming past due insurance benefits of around \$8000, together with interest thereon. Plaintiff claims that the insurance policy provides for rehabilitation benefits in a sum not to exceed 24 months of benefits. As Plaintiff's monthly benefit is \$2700, the maximum rehabilitation benefit provided by the policy would be \$64,800. Plaintiff claims damages for her emotional distress and for pain and suffering and other general damages in a sum to be determined by the jury. Plaintiff seeks punitive damages in a sum sufficient to punish Defendants, amount to be determined by the jury. Plaintiff also seeks to recover her reasonable attorney fees in collecting unpaid benefits, in a sum to be determined at the time of trial and additional attorney fees under the California Private Attorney General Law. Plaintiff is also seeking equitable relief pursuant to California Business and Professions Code § 17200 et seq.

Pan-American does not seek any damages in this action.

12. Settlement and ADR

Per ADR Local Rule 3-5, the parties filed a Notice of Need for ADR Conference on August 8, 2007. The parties are amenable to mediation, which should take place following initial written

discovery and party depositions.

13. Consent to Magistrate Judge For All Purposes

Pan-American declines assignment of this case to a Magistrate Judge for all purposes. Pan-American filed its Declination on July 13, 2007.

14. Other References

This case is not suitable for reference to binding arbitration, special master, or the Judicial Panel on Multidistrict Litigation.

15. Narrowing of Issues

The parties have not yet determined any issues that can be narrowed by agreement or by motion at this time. The parties also do not presently have any suggestions to expedite the presentation of evidence at trial, nor do they request to bifurcate any issues, claims or defenses at this time.

Plaintiff has requested a stipulation that Plaintiff is disabled, inasmuch as Defendant has apparently determined that Plaintiff is entitled to benefits under the policy. Defendant is not currently prepared to enter into such a stipulation.

16. Expedited Schedule

This case is not appropriate for handling on an expedited basis.

17. Scheduling

The parties propose the following pre-trial and trial deadlines:

April 4, 2008	Non-Expert Discovery Cut-Off
May 16, 2008	Designation of Experts
June 16, 2008	Supplemental Designation of Experts
May 27, 2008	Deadline to Hear Dispositive Motions
June 30, 2008	Expert Discovery Cut-Off
July 2008	Pre-Trial Conference
August 2008	Trial

18. Trial

Plaintiff has demanded a jury trial. The expected length of trial is approximately 8 court

1 days.

2 **19. Disclosure of Non-Party Interested Entities or Persons**

3 Pursuant to Civil Local Rule 3-16, Plaintiff certifies that no persons, associations of persons,
4 firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial
5 interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-
6 financial interest in that subject matter or in a party that could be substantially affected by the
7 outcome of this proceeding.

8 Pursuant to Civil Local Rule 3-16, Pan-American certifies that no persons, associations of
9 persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a
10 financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a
11 non-financial interest in that subject matter or in a party that could be substantially affected by the
12 outcome of this proceeding.

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14 **20. Other Matters As May Facilitate the Just, Speedy and Inexpensive Disposition of This**
15 **Matter**

16 Not applicable.

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DATED: August 22, 2007.

LAW OFFICE OF MICHAEL E. KINNEY

By /s/ Michael E. Kinney
Michael E. Kinney
Attorneys for Plaintiff Donna Mathews

DATED: August 22, 2007.

REED SMITH LLP

By /s/ Thomas A. Evans
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